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SUBJECT: NETHERLANDS/INCSR: PART II, MONEY LAUNDERING AND FINANCIAL
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1. The following is Embassy The Hague's submission of Part II of the 2007-2008 International Narcotics Control Strategy Report: Money Laundering and Financial Crimes. Embassy Point of Contact for this report is Deputy TFCO/Econoff Jay Heung at heungj2@state.gov, +31.70.310.2339. As requested reftel, Post will also email the report to Gary Williams, Ed Rindler, Jennifer Showell, Tim Ott, and Tim Smith, the Netherlands Desk Officer.

2. BEGIN TEXT OF REPORT

THE NETHERLANDS

The Netherlands is a major financial center and an attractive venue for the laundering of funds generated from a variety of illicit activities. Activities involving money laundering are often related to the sale of heroin, cocaine, cannabis, or synthetic and designer drugs (such as ecstasy). As a major financial center, several Dutch financial institutions engage in international business transactions involving large amounts of United States currency. There are, however, no indications that significant amounts of U.S. dollar transactions conducted by financial institutions in the Netherlands stem from illicit activity. Activities involving financial fraud are believed to generate a considerable portion of domestic money laundering. A recent report by the University of Utrecht commissioned by the Ministry of Finance has found that much of the money laundered in the Netherlands comes from abroad, but did not find evidence that it is predominantly owned by major drug cartels and other international criminal organizations. There are no indications of syndicate-type structures in organized crime or money laundering, and there is virtually no black market for smuggled goods in the Netherlands. Although under the Schengen Accord there are no formal controls on the borders with Germany and Belgium, the Dutch authorities run special operations in the border areas to keep smuggling to a minimum. Reportedly, money laundering amounts to 18.5 billion euros (approximately \$27.14 billion) annually, or five percent of the Dutch GDP. The Netherlands is not an offshore financial center nor are there any free trade zones in the Netherlands.

In 1994, the Government of the Netherlands (GON) criminalized money laundering related to all crimes. In December 2001, the GON enacted legislation specifically criminalizing facilitating, encouraging, or engaging in money laundering. This eases the public prosecutor's burden of proof regarding the criminal origins of proceeds: under the law, the public prosecutor needs only to prove that the proceeds "apparently" originated from a crime. Self-laundering is also covered. In two cases in 2004 and 2005, the Dutch Supreme Court confirmed the broad application of the money laundering provisions by stating that the public prosecutor does not need to prove the exact origin of laundered proceeds for conviction, and that the general criminal origin as well as the knowledge of the perpetrator may be deducted from objective circumstances.

The Netherlands has an "all offenses" regime for predicate offenses of money laundering. The penalty for "deliberate acts" of money laundering is a maximum of four years' imprisonment and a maximum fine of 45,000 euros (approximately \$66,000), while "liable acts" of money laundering (by people who do not know first-hand of the criminal nature of the origin of the money, but should have reason to suspect it) are subject to a maximum imprisonment of one year and a fine no greater than 45,000 euros (approximately \$66,000). Habitual money laundering may be punished with a maximum imprisonment of six years and a maximum fine of 45,000 euros (approximately \$66,000), and those convicted may also have their professional licenses revoked. In addition to criminal prosecution for money laundering offenses, money laundering suspects can also be charged with participation in a criminal organization (Article 140 of the Penal Code), violations of the financial regulatory acts, violations of the Sanctions Act, or noncompliance with the obligation to declare unusual transactions according to the Economic Offenses Act.

The Netherlands has comprehensive anti-money laundering legislation. The Services Identification Act and the Disclosure Act set forth

identification and reporting requirements. All financial institutions in the Netherlands, including banks, bureaux de change, casinos, life insurance companies, securities firms, stock brokers, and credit card companies, are required to report cash transactions over certain thresholds (varying from 2,500 to 15,000 euros or approximately \$3,670 to \$21,000), as well as any less substantial transaction that appears unusual, a broader standard than "suspicious" transactions, to the Netherlands' financial intelligence unit (FIU-the Netherlands). In December 2001, the reporting requirements were expanded to include trust companies, financing companies, and commercial dealers of high-value goods. In June 2003, notaries, lawyers, real estate agents/intermediaries, accountants, business economic consultants, independent legal advisers, trust companies and other providers of trust related services, and tax advisors were added.

The FIU for the Netherlands is a hybrid administrative-law enforcement unit that in 2006 combined the traditional FIU MOT (Meldpunt Ongebruikelijke Transacties, or in English the Office for the Disclosure of Unusual Transactions) with its police counterpart, the Office of Operational Support of the National Public Prosecutor (BLOM). When MOT, established in 1994, and the BLOM merged, the resulting entity was integrated within the National Police (KLPD). The new unit is called the FIU-the Netherlands. This new FIU structure provides an administrative function that receives, analyzes, and disseminates the unusual and currency transaction reports filed by banks, financial institutions and other reporting entities. It also provides a police function that serves as a point of contact for law enforcement. It forwards suspicious transaction reports with preliminary investigative information to the Police Investigation Service. This new organization responds to requests from foreign FIUs for financial and law enforcement information. Over the last five years, the MOT and the BLOM cooperated closely in responding to international requests for information, so this merger has not changed the nature of the Dutch reporting system. FIU-the Netherlands is part of the Egmont Group.

Reporting entities that fail to file reports with the FIU-the Netherlands can be prosecuted in one of two ways. First, one of four supervisors may impose an administrative fine of up to 32,670 euros (approximately \$47,905), depending on the size of the entity. The supervisor involved depends on the type of entity. The Dutch Tax Administration supervises commercial dealers. The Bureau Financieel Toezicht (BFT or Office for Financial Oversight) supervises notaries, lawyers, real estate agents, and accountants. De Nederlandsche Bank (Dutch Central Bank) supervises trust companies, casinos, banks, bureaux de change, and insurance companies. The Authority for Financial Markets supervises clearinghouses, brokers, and securities firms. Second, the public prosecutor may fine non-reporting entities 11,250 euros (approximately \$16,495), or charge individuals failing to report with prison terms of up to two years. Under the Services Identification Act, all those that are subject to reporting obligations must identify their clients, including the identity of ultimate beneficial owners, either at the time of the transaction or prior to the transaction, before providing financial services.

Since 2005 the GON has implemented a number of measures to enhance the effectiveness of its antimoney laundering system. In November 2005, the Board of Procurators General, which establishes guidelines for public prosecutors, issued a National Directive on money laundering crime that mandated a financial investigation in every serious crime case, set guidelines for determining when to prosecute for money laundering and provided technical explanations of money laundering offenses, case law, and the use of financial intelligence. A new set of indicators, which determine when an unusual transaction report must be filed, also entered into force in November 2005. These new indicators represent a partial shift from a rule-based to a risk-based system and are aimed at reducing the administrative costs of reporting unusual transactions for the reporting institutions without limiting the preventive nature of the reporting system. The Dutch parliament has also approved amendments to the Services Identification Act and Disclosure Act that expand supervision authority and introduce punitive damages. The revised legislation, which became effective on May 1, 2006, incorporates a terrorist financing indicator in the reporting system.

Financial institutions are also required by law to maintain records necessary to reconstruct financial transactions for at least five years after termination of the relationship. There are no secrecy laws or fiscal regulations that prohibit Dutch banks from disclosing client and owner information to bank supervisors, law enforcement officials, or tax authorities. Financial institutions and all other institutions under the reporting and identification acts, and their employees, are specifically protected by law from criminal or civil liability related to cooperation with law enforcement or bank supervisory authorities. Furthermore, current legislation requires Customs authorities to report unusual transactions to the FIU-the Netherlands. In June 2006, a law introducing a currency declaration requirement for amounts valued over 10,000 euros for travelers entering and leaving Schengen became effective. The law requires travelers to submit a declaration form and implements EU regulation 1889/2005 on Liquid Assets Control. The Dutch use specially trained dogs at ports and airports to identify cash smugglers, finding four million euros (approximately \$5.9 million) in passenger luggage at Schiphol airport alone in 2006.

The Money Transfer and Exchange Offices Act, which was passed in June 2001, requires money transfer offices, as well as exchange offices, to obtain a permit to operate, and subjects them to supervision by the Central Bank. Every money transfer client has to be identified and all transactions totaling more than 2,000 euros (approximately \$2,935) must be reported to the FIU-the Netherlands.

The Central Bank of the Netherlands, which merged with the Pension and Insurance Chamber in April 2004, and the Financial Markets

Authority, as the supervisors of the Dutch financial sector, regularly exchanges information nationally and internationally. Sharing of information by Dutch supervisors does not require formal agreements or memoranda of understanding (MOUs).

The FIU-the Netherlands receives 100 percent of unusual transaction reports electronically through its secure website. In 2005, the FIU-the Netherlands received 181,623 reports and forwarded 38,481, totaling over 1.1 billion euros (approximately \$1.6 billion), to enforcement agencies such as the police, fiscal police, and public prosecutor. In 2006, the FIU-the Netherlands received 172,865 unusual transaction reports and forwarded 34,531, totaling over 9.2 million euros (approximately \$13.5 billion) to enforcement agencies as suspicious transactions for further investigation. The average amount reported was 26,870 euros (approximately \$39,400) in 2006, a decrease from the 28,945 euros (approximately \$42,440) average reported in 2005. Approximately 89% of the transactions are in Euros, 8% are in other European currency (of which 5% are in English Pounds) and finally 3% of the transactions are in US Dollars.

In order to facilitate the forwarding of suspicious transactions, the FIU-the Netherlands created an electronic network called Intranet Suspicious Transactions (IST). Fully automatic matches of data from the police databases are included with the unusual transaction reports forwarded to enforcement agencies. On January 1, 2003, the former MOT and BLOM organizations together created a special unit (the MBA-unit) to analyze data generated from the IST. Under the new FIU-the Netherlands structure, the MBA continues to analyze IST data and forwards reports to the police. Since the money laundering detection system also covers areas outside the financial sector, the system is used for detecting and tracing terrorist financing activity. The FIU-the Netherlands provides the antimoney laundering division of Europol with suspicious transaction reports, and Europol applies the same analysis tools as the FIU-the Netherlands.

The Netherlands has enacted legislation governing asset forfeiture. The 1992 Asset Seizure and Confiscation Act enables authorities to confiscate assets that are illicitly obtained or otherwise connected to criminal acts. The GON amended the legislation in 2003 to improve and strengthen the options for identifying, freezing, and seizing criminal assets. The police and several special investigation services are responsible for enforcement in this area. These entities have adequate powers and resources to trace and seize assets. All law enforcement investigations into serious crime may integrate asset seizure.

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Authorities may seize any tangible assets, such as real estate or other conveyances that were purchased directly with the proceeds of a transaction tracked to illegal activities. Property subject to confiscation as an instrumentality may consist of both moveable property and claims. Assets can be seized as a value-based confiscation. Asset seizure and confiscation legislation also provides for the seizure of additional assets controlled by a drug trafficker. Legislation defines property for the purpose of confiscation as "any object and any property right." Proceeds from narcotics asset seizures and forfeitures are deposited in the general fund of the Ministry of Finance. Dutch authorities have not identified any significant legal loopholes that allow drug traffickers to shield assets.

In order to promote the confiscation of criminal assets, the GON has instituted special court procedures. These procedures enable law enforcement to continue financial investigations in order to prepare confiscation orders after the underlying crimes have been successfully adjudicated. All police and investigative services in the field of organized crime rely on the real time assistance of financial detectives and accountants, as well as on the assistance of the Proceeds of Crime Office (BOOM), a special bureau advising the Office of the Public Prosecutor in international and complex seizure and confiscation cases. To further international cooperation in this area, the Camden Asset Recovery Network (CARIN) was set up in The Hague in September 2004. BOOM played a leading role in the establishment of this informal international network of asset recovery specialists, whose aim is the exchange of information and expertise in the area of asset recovery.

Statistics provided by the Office of the Public Prosecutor show that the assets seized in 2006 amounted to 17 million euros (approximately \$24.9 million). This compares with 11 million euros in 2005 and 11 million euros in 2004 (approximately \$14.5 million and \$13 million respectively, based on the exchange rates at the time). The United States and the Netherlands have had an asset-sharing agreement in place since 1994. The Netherlands also has an asset-sharing treaty with the United Kingdom, and an agreement with Luxembourg.

In June 2004, the Minister of Justice sent an evaluation study to the Parliament on specific problems encountered with asset forfeiture in large, complex cases. In response to this report, the GON announced several measures to improve the effectiveness of asset seizure enforcement, including steps to increase expertise in the financial and economic field, assign extra public prosecutors to improve the coordination and handling of large, complex cases, and establish a specific asset forfeiture fund. The Office of the Public Prosecutor has designed a new centralized approach for large confiscation cases and a more flexible approach for handling smaller cases. Both took effect in 2006 and significantly increase BOOM's capacity to handle asset forfeiture cases.

Terrorist financing is a crime in the Netherlands. In August 2004, the Act on Terrorist Crimes, implementing the 2002 EU framework decision on combating terrorism, became effective. The Act makes recruitment for the Jihad and conspiracy to commit a terrorist act criminal offenses. In 2004, the government created a National Counterterrorism Coordinator's Office to streamline and enhance Dutch counterterrorism efforts.

UN resolutions and EU regulations form a direct part of the national legislation on sanctions in the Netherlands. The "Sanction Provision for the Duty to Report on Terrorism" was passed in 1977 and amended

in June 2002 to implement European Union (EU) Regulation 2580/2001. United Nations Security Council Resolution (UNSCR) 1373 is implemented through Council Regulation 2580/01; listing is through the "Clearing-House" procedure. The ministerial decree provides authority to the Netherlands to identify, freeze, and seize terrorist finance assets. The decree also requires financial institutions to report to the FIU-the Netherlands all transactions (actually carried out or intended) that involve persons, groups, and entities that have been linked, either domestically or internationally, with terrorism. Any terrorist crime will automatically qualify as a predicate offense under the Netherlands

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"all offenses" regime for predicate offenses of money laundering. Involvement in financial transactions with suspected terrorists and terrorist organizations listed on the United Nations (UN) 1267 Sanctions Committee's consolidated list or designated by the EU has been made a criminal offense. The Dutch have taken steps to freeze the assets of individuals and groups included on the UNSCR 1267 Sanctions Committee's consolidated list. UNSCR 1267/1390 is implemented through Council Regulation 881/02. Sanctions Law 1977 also addresses this requirement parallel to the regulation in the Netherlands.

The Netherlands does not require a collective EU decision to identify and freeze assets suspected of being linked to terrorism nationally. In these cases, the Minister of Foreign Affairs and the Minister of Finance make the decision to execute the asset freeze. Decisions take place within three days after identification of a target. Authorities have used this instrument several times in recent years. In three cases, national action followed the actions taking place on the EU level. In one case, the entity was included on the UN 1267 list and was automatically included in the list that is part of EU regulation 2002/881. In two other cases the Netherlands successfully nominated the entity/individual for inclusion on the autonomous EU list that is compiled pursuant to Common Position 2001/931.

The 2004 Act on Terrorist Offenses introduced Article 140A of the Criminal Code, which criminalizes participation in a terrorist organization, and defined participation as membership or providing provision of monetary or other material support. Article 140A carries a maximum penalty of fifteen years' imprisonment for participation in and life imprisonment for leadership of, a terrorist organization. Nine individuals were convicted in March 2006 on charges of membership in a terrorist organization. Legislation expanding the use of "special investigative techniques" was enacted in February 2007.

Unusual transaction reports by the financial sector act as the first step against the abuse of religious organizations, foundations and charitable institutions for terrorist financing. No individual or legal entity using the financial system (including churches and other religious institutions) is exempt from the identification requirement. Financial institutions must also inquire about the identity of the ultimate beneficial owners. The second step, provided by Dutch civil law, requires registration of all active foundations in the registers of the Chambers of Commerce. Each foundation's formal statutes (creation of the foundation must be certified by a notary of law) must be submitted to the Chambers. Charitable institutions also register with, and report to, the tax authorities in order to qualify for favorable tax treatment. Approximately 15,000 organizations (and their managements) are registered in this way. The organizations must file their statutes, showing their purpose and mode of operations, and submit annual reports. Samples are taken for auditing. Finally, many Dutch charities are registered with or monitored by private "watchdog" organizations or self-regulatory bodies, the most important of which is the Central Bureau for Fund Raising. In April 2005, the GON approved a plan to replace the current initial screening of founders of private and public-limited partnerships and foundations with an ongoing screening system. The new system will be introduced in 2007 to improve Dutch efforts to fight fraud, money laundering, and terrorist financing.

Certain groups of immigrants are the primary users of informal banks to send money to their relatives in their countries of origin. However there are also indications of the misuse of informal banks in the Netherlands for criminal purposes, including a small number of informal bankers which are deliberately engaged in money laundering transactions and cross border transfers of criminal money. Initial research by the Dutch police and Internal Revenue Service and Economic Control Service (FIOD/ECD) indicates that the number of informal banks and hawaladars in the Netherlands is rising. The Dutch Government plans to implement improved procedures for tracing and prosecuting unlicensed informal or hawala-type activity, with the Dutch Central Bank, FIOD/ECD, the Financial Expertise Center, and the Police playing a coordinating and central role. The Dutch Finance Ministry has participated in a World

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Bank-initiated international survey on money flows by immigrants to their native countries, with a focus on relations between the Netherlands and Suriname. The Dutch Central Bank has initiated a study into the number of informal banking institutions in the Netherlands. In Amsterdam, a special police unit has been investigating underground bankers. These investigations have resulted in the disruption of three major underground banking schemes.

The Netherlands is in compliance with all FATF Recommendations, with respect to both legislation and enforcement. The Netherlands also complies with the Second EU Money Laundering Directive and plans to implement the Third EU Money Laundering Directive through the adoption of a new act on combating money laundering and terrorism financing that will enter into force in 2008.

The United States enjoys good cooperation with the Netherlands in fighting international crime, including money laundering. In September 2004, the United States and the Netherlands signed

bilateral implementing instruments for the U.S. - EU mutual legal assistance and extradition treaties; the agreements have not yet been ratified.. One provision of the U.S.- EU legal assistance agreement would facilitate the exchange of information on bank accounts. In 2007, the Dutch Ministry of Justice approved two MLAT requests for the U.S. Drug Enforcement Agency to attempt two undercover money pick up operations targeting Colombian money laundering organizations operating in the Netherlands. This was the first time that such an operation was attempted in the Netherlands; the operation is still ongoing.

The former MOT organization supervised the PHARE Project for the European Union (March 2002-December 2003). The PHARE Project was the European Commission's Anti-Money Laundering Project for Economic Reconstruction Assistance to Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Romania, Bulgaria, Cyprus, and Malta. The purpose of the project was to provide support to Central and Eastern European countries in the development and/or improvement of antimoney laundering regulations. Although the PHARE project concluded in December 2003, the MOT moved forward with the development of the FIU.NET Project, (an electronic exchange of current information between European FIUs by means of a secure intranet), which the new FIU-the Netherlands structure continues to use. In March 2006, the Dutch hosted a major international terrorist financing conference.

The Netherlands is a member of the Financial Action Task Force and the Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL). The Netherlands participates in the Caribbean Financial Action Task Force as a Cooperating and Supporting Nation. As a member of the Egmont Group, the FIU-the Netherlands has established close links with the U.S Treasury's FincEN as well as with other Egmont members, and is involved in efforts to expand international cooperation. The Netherlands is a party to the 1988 UN Drug Convention, and the UN International Convention for the Suppression of the Financing of Terrorism, and the UN Convention against Transnational Organized Crime.

END TEXT OF REPORT

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